

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

KIMBERLY DAWN GRALEY,

Plaintiff,

v.

CIVIL ACTION NO. 3:14-25277

CAROLYN W. COLVIN,
Acting Commissioner of the
Social Security Administration,

Defendant.

ORDER

This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted Findings of Fact and recommended that “Plaintiff’s Brief in Support of Motion for Judgment on the Pleadings” (ECF No. 10), be granted; the Commissioner’s “Brief in Support of Defendant’s Decision” (ECF No. 11), be denied; the final decision of the Commissioner be reversed; and this case be remanded for further proceedings. The Commissioner objects to the Proposed Findings and Recommendation.

On April 27, 2011, Plaintiff applied for Supplemental Security Income (SSI) under Title XVI of the Social Security Act (SSA), and for medical assistance under Title XIX of the SSA. Her claim was denied initially and upon reconsideration. Plaintiff requested a hearing, which was held on February 27, 2013. Following the hearing, the Administrative Law Judge (ALJ) found Plaintiff was not disabled. Plaintiff requested review of the ALJ’s decision and submitted

approximately 140 pages of mental health records. (Tr. at 6, 497-637). The Appeals Council admitted the additional evidence, but ultimately denied the request for review stating “[w]e found no reason under our rules to review the Administrative Law Judge’s decision. Therefore, we have denied your request for review.” (Tr. at 1). Plaintiff then appealed to this Court seeking reversal and remand of the decision.

In considering the issue, the Magistrate Judge found that “the ALJ’s decision is not supported by substantial evidence as he” never reviewed the additional evidence admitted by the Appeals Council. *Prop. Findings and Recommendation*, at 16 (ECF No. 13). The Commissioner argues, however, that the Magistrate Judge erred in recommending this action be reversed and remanded because the subsequently submitted evidence was not material to Plaintiff’s claim, in that it does not present a reasonable possibility of a different outcome, and it does not show that the ALJ’s decision was unsupported by substantial evidence.

As pointed out by the Magistrate Judge, the ALJ assigned “great weight” to the opinion of a non-examining consultative psychologist, Jeff Boggess, Ph.D., ““because it is consistent with the overall evidence of record.”” *Id.* at 10 (quoting Tr. at 20). In addition, the ALJ gave “little weight” to the opinion of the examining consultative psychologist, Rachel Arthur, M.A., ““because it is not supported longitudinally.”” *Id.* However, the evidence admitted by the Appeals Council verify Plaintiff’s treatment for mental impairments from February 2007 through September 2009 at Presteria Mental Health Center. These documents were not considered by the ALJ, but demonstrate a history of mental impairments and a global assessment of functioning score that indicates a “serious impairment to social, occupational, or school functioning.” *Id.* at 8 (citations omitted). Thus, the

Court finds the evidence from Prestera is material to her claim and presents a reasonable possibility that the outcome would have been different if the evidence was considered by the ALJ. Therefore, for these reasons and the reasons more fully set forth in the Proposed Findings and Recommendation, the Court agrees with the Magistrate Judge that “the ALJ’s decision is not supported by substantial evidence as he has not reviewed the record as a whole.” *Id.* at 16.

Accordingly, the Court **DENIES** Defendant’s objections and **ACCEPTS** and **INCORPORATES** the Proposed Findings and Recommendation of the Magistrate Judge, which **GRANTS** “Plaintiff’s Brief in Support of Motion for Judgment on the Pleadings” (ECF No. 10), **DENIES** the Commissioner’s “Brief in Support of Defendant’s Decision” (ECF No. 11), **REVERSES** the decision of the Commissioner, **REMANDS** this case for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g), and **DISMISSES** this matter from the docket of the Court.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Tinsley, counsel of record and any unrepresented parties.

ENTER: September 29, 2015



ROBERT C. CHAMBERS, CHIEF JUDGE